

CRM-M-5375-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106+211

CRM-M-5375-2023 (O&M)

Date of Decision: 04.05.2023

Sanjeev Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sajal Bansal, Advocate with
Mr. Saransh Sabharwal, Advocate for the petitioner

Ms. Dimple Jain, AAG, Haryana

Mr. Arun K. Gupta, Advocate for the complainant

JAGMOHAN BANSAL, J. (ORAL)

CRM-20144-2023

For the reasons assigned therein, application for amendment/addition of offence under Section 420 IPC in the head note, para 2, para 3 and prayer clause of main petition, is allowed. Registry is directed to carry out necessary amendments.

CRM stands disposed of.

CRM-20146-2023

Application for placing on record Annexure P-4 is allowed. The same is taken on record subject to just exceptions. Registry is directed to tag at appropriate place.

CRM stands disposed of.

CRM-M-5375-2023

1. The petitioner, through instant petition under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking concession of regular bail in FIR No.251 dated 08.12.2022 under Sections 323, 406, 377, 498-A, 494 & 506 (Section 420 added later) of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Kalka, Panchkula.

2. The case of the prosecution is that complainant lodged a complaint alleging that petitioner-accused solemnized marriage with her on 07.07.2021. At the time of marriage, she was 41 years old. She was working in Aditya Birla Company and was getting salary of Rs.36,419/- per month. The petitioner-husband used to withdraw her salary through ATM. Her husband has withdrawn PPF amount of Rs.2.5 Lacs and further taken personal loan of Rs.1.35 Lacs in her name. The present marriage of the petitioner is third marriage. The petitioner had given beatings to the complainant. The petitioner is having extra marital relation with Divya. The petitioner and Divya assaulted the complainant. On 02.10.2022, she escaped from her matrimonial home and came back to her parental home at Delhi.

3. Learned counsel for the petitioner, *inter alia* contends that petitioner is in custody since 06.01.2023. The police after completing investigation has already filed challan thus, no recovery is to be effected from him. The petitioner is accused of commission of offence punishable under different Sections of IPC and all the offences are triable by Magistrate. The maximum sentence prescribed under Section 377 of IPC

is 10 years. There is no medical evidence of unnatural sex, however, complainant has lodged FIR under Sections 377 and 420 IPC apart from Section 498-A IPC. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Panchkula. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Learned State counsel and learned counsel for the complainant submit that there is another FIR under Sections 498-A and 494 of IPC against the petitioner. The aforesaid FIR was lodged by his previous wife. Learned State counsel further submits that police report has already been filed and charges stand framed. She further submits that there are 9 prosecution witnesses. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

5. In the case in hand, the complainant has primarily alleged against the petitioner that he has withdrawn her salary and obtained loan in her name. There is further allegation of maltreatment. The petitioner is in custody since 07.01.2023, as confirmed by learned State counsel. The challan stands presented and charges stand framed. The alleged offences are triable by Magistrate and no recovery is to be effected from the petitioner. The Trial Court yet has to return definite findings on the disputed issues. There are 9 prosecution witnesses, thus, there is abysmally low possibility of conclusion of trial in near future. As prosecution has right to arrest, investigate the matter and restrain an

accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody. The prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of petitioner being flee from justice or tampering the evidences or winning over/threatening the witnesses.

6. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaq/Duty Magistrate concerned.

7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

04.05.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>